

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0020

For

Violation of Waste Discharge Requirements
Order No. R1-2000-15
WDID No. 1B83134OHUM
NPDES No. CA0022748

In The Matter Of
City of Rio Dell
Wastewater Treatment Facility

Humboldt County

This Complaint to assess mandatory minimum penalties pursuant to California Water Code sections 13385 (h)(1) and (i) is issued to the City of Rio Dell (hereinafter Discharger) for violations of Waste Discharge Requirements Order No. R1-2000-15 (NPDES No. CA0023272) for the period of February 24, 2000, through May 31, 2006.

The Executive Officer of the Regional Water Board finds the following:

1. The Discharger owns and operates the City of Rio Dell Wastewater Treatment Facility (WWTF) that discharges secondary-treated domestic wastewater into the Eel River during winter months (October 1 to May 14).
2. The Regional Water Board adopted Waste Discharge Requirements Order No. 2000-15 for the Discharger on February 24, 2000, which served as a National Pollutant Discharge Elimination System (NPDES) permit under the Federal Clean Water Act. Order No. R1-2000-15 was replaced by Waste Discharge Requirements Order No. R1-2006-0021, adopted by the Regional Water Board on May 17, 2006 and effective on June 16, 2006, which also serves as a NPDES permit.
3. This Complaint covers violations of effluent limitations for discharges that occurred from February 24, 2000, through May 31, 2006. The details of these violations are presented in Finding 13 of this Complaint. These violations are subject to the mandatory minimum penalties provisions contained in California Water Code section 13385, subdivisions (h) and (i).
4. Water Code section 13385, subdivision (h)(1) establishes a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation of an NPDES permit effluent limitation. Water Code section 13385, subdivision (h)(2)

states that a serious violation occurs if the discharge from a facility regulated by an NPDES permit exceeds the effluent limitations for a Group I pollutant, as specified in Appendix A to section 123.45 of title 40 of the Code of Federal Regulations, by 40 percent or more, or for a Group II pollutant, as specified in Appendix A to section 123.45 of title 40 of the Code of Federal Regulations, by 20 percent or more.

5. Water Code section 13385, subdivision (i)(1) establishes a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six-month period:
 - a. Violates a waste discharge requirement effluent limitation.
 - b. Fails to file a report pursuant to Section 13260.
 - c. Files an incomplete report pursuant to Section 13260.
 - d. Violates a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Violations under section 13385, subdivision (i)(1) are referred to as chronic violations in this Complaint.

6. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. The Enforcement Policy addresses, among other enforcement issues, issues related to assessing mandatory minimum penalties.
7. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may elect to require all or a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) against a publicly owned treatment work (POTW) serving an eligible small community to be directed to a compliance project (CP) in accordance with Section X of the Enforcement Policy. This Complaint incorporates requirements for CPs as specified in the Enforcement Policy.
8. Water Code section 13385, subdivision (l)(1) provides that a Regional Water Board may direct, with concurrence of the discharger, a portion of mandatory minimum penalties imposed under section 13385, subdivision (h) or (i) to a supplemental environmental project (SEP) in accordance with Section IX of the Enforcement Policy. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand

dollars (\$15,000). This Complaint incorporates requirements for SEPs as specified in the Enforcement Policy.

9. For the purpose of determining a Discharger's compliance with effluent limitations in its Waste Discharge Requirements Order/NPDES permit, the 30-day average is equivalent to the monthly average, which is defined as the arithmetic mean of all daily determinations made during a calendar month. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily discharges divided by the number of days during the calendar month when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the monthly average.
10. For the purpose of determining a Discharger's compliance with effluent limitations in its Waste Discharge Requirements Order/NPDES permit, the 7-day average is equivalent to the weekly average, which is defined as the arithmetic mean of all daily determinations made during a calendar week, Sunday to Saturday. Where less than daily sampling is required, the average shall be determined by the sum of all the measured daily discharges divided by the number of days during the calendar week when the measurements were made. If only one sample is collected during that period of time, the value of the single sample shall constitute the weekly average.
11. Order No. R1-2000-15 includes the following effluent limitations:

B. EFFLUENT LIMITATIONS

1. Representative sample of the discharge must not contain constituents in excess of the following limits:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Average^a</u>	<u>Weekly Average^b</u>	<u>Daily Maximum</u>
BOD (20°C, 5-day)	mg/l	30	45	60
	lb/day ^c	250	375	500
Suspended Solids	mg/l	30	45	80
	lb/day ^c	250	375	107

^a The arithmetic mean of the values for effluent samples collected in a period of 30 consecutive days.

^b The arithmetic mean of the values for effluent samples collected in a period of seven consecutive days.

^c The daily discharge (lbs/day) is obtained from the following calculation of any calendar day:

$$\frac{8.34}{N} \sum_i^N Q_i C_i$$

in which N is the number of samples analyzed in any calendar day. Q_i and C_i are the flow rate (mgd) and the constituent concentration (mg/l), respectively, which are associated with each of the N grab samples which may be taken in any calendar day. If a composite sample is taken, C_i is the concentration

Settleable Solids	mg/l	0.1	---	0.2
Coliform Organisms (Total)	MPN/100 ml	23 ^d	---	230
Hydrogen Ion	pH	Not less than 6 nor greater than 9		

3. Treated wastewater discharge to the Eel River shall not contain detectable levels of chlorine.
 4. The arithmetic mean of the BOD (20°C, 5-day) and Suspended Solids values by weight for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the values, by weight, for influent samples collected at approximately the same time during the same period (85 percent removal).
 5. The survival of test fish in 96-hour [static or continuous flow] bioassays in undiluted effluent samples shall equal or exceed 90% survival 67% of the time, and 70% survival 100% of the time.
12. The Enforcement Policy states that for the purpose of determining serious violations, BOD, suspended solids, and pH are identified as Group I pollutants in Title 40 Code of Federal Regulations, section 123.45, Appendix A. Total Coliform is neither a Group I nor a Group II pollutant; therefore, exceedances of effluent limitations for total coliform bacteria do not count as serious violations.
13. According to monitoring reports submitted by the Discharger for the period between February 24, 2000, and May 31, 2006, the Discharger exceeded effluent limitations thirty-one times while discharging effluent to the Eel River. Of those thirty-one exceedances, nine were serious violations, as defined in Water Code section 13385, subdivision (h)(2), and twenty-two were chronic effluent violations, as described in Water Code section 13385, subdivision (i)(1). The mandatory minimum penalty amount for violations during this time period is \$63,000, as shown in the following table:

**Effluent Limitation Exceedances
February 24, 2000 to May 31, 2006**

Violation Date	Description of Violation	Reported Values	Violation Type	Mandatory Penalty
12/14/00	Failed to achieve 85% Removal for BOD	83%	Chronic	\$0

measured in the composite sample; and Qi is the average flow rate occurring during the period over which samples are composited.

^d median

12/14/00	Failed to achieve 85% Removal for TSS	72%	Serious	\$3,000
04/30/01	Exceeded 30-Day Ave. of 23 MPN for Coliform	66 MPN	Chronic	\$0
01/03/02	Failed to achieve 85% Removal for BOD	83%	Chronic	\$0
01/03/02	Failed to achieve 85% Removal for TSS	77%	Serious	\$3,000
01/10/02	Exceeded Daily Max of 230 MPN for Coliform	500 MPN	Chronic	\$0
12/26/02	Failed to achieve 70% Survival for Effluent Acute Toxicity Test	55%	Chronic	\$0
01/30/03	Exceeded Daily Max of 230 MPN for Coliform	500 MPN	Chronic	\$0
12/11/03	Exceeded Daily Max of 230 MPN for Coliform	1600 MPN	Chronic	\$0
01/29/04	Exceeded Daily Max of 230 MPN for Coliform	1600 MPN	Chronic	\$0
02/05/04	Exceeded 30-Day Avg. BOD Limits of 30 mg/l	37 mg/l	Chronic	\$0
02/05/04	Exceeded 30-Day Avg. BOD Limits of 250 lb/day	334 lb/day	Chronic	\$3,000
02/05/04	Exceeded 30-Day Avg. TSS Limits of 30 mg/l	38 mg/l	Chronic	\$3,000
02/05/04	Exceeded 30-Day Avg. TSS Limits of 250 lb/day	343 lb/day	Chronic	\$3,000
02/05/04	Failed to achieve 85% Removal for BOD	82%	Chronic	\$3,000
05/13/04	Exceeded Daily Max of 230 MPN for Coliform	500 MPN	Chronic	\$3,000
01/13/05	Failed to achieve 85% Removal for TSS	76%	Serious	\$3,000
04/21/05	Failed to achieve 85% Removal for TSS	76%	Serious	\$3,000
04/21/05	Failed to achieve 85% Removal for BOD	81%	Chronic	\$0
04/21/05	Exceeded Daily Max of 230 MPN for Coliform	1600 MPN	Chronic	\$3,000
05/19/05	Failed to achieve 85% Removal for TSS	81%	Chronic	\$3,000
06/16/05	Failed to achieve 85% Removal for BOD	83%	Chronic	\$3,000
12/22/05	Failed to achieve 85% Removal for TSS	58%	Serious	\$3,000
01/31/06	Failed to achieve 85% Removal for TSS	75%	Serious	\$3,000

02/23/06	Exceeded 30-day Avg. BOD limits of 30mg/l	33.8 mg/l	Chronic	\$0
02/23/06	Failed to achieve 85% Removal for BOD	83%	Chronic	\$3,000
03/09/06	Failed to achieve 85% Removal for BOD	82%	Chronic	\$3,000
03/09/06	Failed to achieve 85% Removal for TSS	77%	Serious	\$3,000
03/09/06	Exceeded 30-Day Avg. BOD Limits of 250 lb/day	254 lb/day	Chronic	\$3,000
04/06/06	Failed to achieve 85% Removal for BOD	78%	Serious	\$3,000
04/06/06	Failed to achieve 85% Removal for TSS	51%	Serious	\$3,000
			Total	\$63,000

14. Regional Water Board staff costs associated with this enforcement action are estimated to be a minimum of \$10,000. This includes staff time to tally violations and prepare this Complaint, public notices, public hearing, response to comments, and evaluation and tracking of a Compliance Project, if any, through to completion.

15. The issuance of this Complaint is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a)(2).

THE CITY OF RIO DELL IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board has issued a Complaint for \$63,000 against the Discharger for the mandatory minimum penalties associated with effluent violations that occurred from February 24, 2000, through May 31, 2006.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on April 25 and 26, 2007, unless the Discharger waives the right to a hearing under Water Code section 13323, subdivision (b) by signing and returning the waiver form attached to this Complaint within thirty days of the date of this Complaint. By doing so, the Discharger agrees to:
 - a. Pay the mandatory minimum penalty of \$63,000 in full to the State Water Pollution Cleanup and Abatement Account within thirty days of the date of this Complaint, or

- b. Propose a SEP in an amount up to \$39,000 and pay the \$24,000 balance of the penalty within thirty days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall at least equal the amount of the full penalty.
 - c. Propose a CP in the amount up to \$53,000 and pay the \$10,000 balance of the penalty (to recover staff costs) within thirty days from the date of the Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the CP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall at least equal the amount of the full penalty.
3. If the Discharger chooses to propose an SEP or CP, a proposal must be submitted within thirty days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP or CP proposal shall also conform to the requirements specified in the Enforcement Policy. The SEP or CP proposal must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion of the SEP or CP. If the proposed SEP or CP and/or implementation schedule is not acceptable, the Executive Officer may allow the Discharger thirty days to submit a new or revised proposal, or may demand that the Discharger remit all or a portion of the assigned penalties. All payments, including money not used for the SEP or CP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on the next day after the thirty day public comment period on this Complaint ends. If there are significant public comments, the Executive Officer may withdraw this Complaint, and reissue a new complaint, or take other appropriate action.
5. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.
6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint, including a proposed CP or SEP.
7. The Executive Officer shall maintain jurisdiction over approved SEP and CP implementation time schedules throughout the life of the SEP or CP. If, given

written justification from the Discharger, the Executive Officer determines that a delay in the SEP or CP implementation schedule was beyond the reasonable control of the Discharger; the Executive Officer may revise the implementation schedule as appropriate.

8. Notwithstanding the issuance of the Compliant, the Regional Water Board shall retain the authority to assess additional penalties beyond the mandatory minimums for violations of the Discharger's waste discharge requirements.

Catherine E. Kuhlman
Executive Officer

March 1, 2007

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